



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

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WIRELINE COMPETITION BUREAU TERMINATES PRICE CAP BUSINESS DATA SERVICES PROCEEDINGS, CLOSES DOCKETS, AND OPENS NEW DOCKET; PARTIES REQUIRED TO DESTROY OR RETURN CONFIDENTIAL AND HIGHLY CONFIDENTIAL DOCUMENTS

WC Docket Nos. 05-25, 16-143, 21-17; RM-10593

By this Public Notice, the Wireline Competition Bureau (Bureau) terminates the Commission's price cap business data services (BDS) proceedings and closes the dockets in those proceedings, WC Docket Nos. 16-143, 05-25, and RM-10593. The Commission resolved all remaining issues in these dockets in the *Price Cap BDS Remand Order*¹ and opportunities for administrative and judicial review of the relevant issues have been exhausted. Pursuant to the protective orders in the price cap BDS proceedings (*BDS Protective Orders*),² by **January 29, 2021**, counsel and consultants are required to destroy or return to the submitting party confidential and highly confidential documents covered by the *BDS Protective Orders* and, by **February 5, 2021**, counsel is required to deliver certification of compliance to counsel for the submitting party.³ In light of the challenges created by the Coronavirus pandemic, however, the

¹ *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767 (2019) (*Price Cap BDS Remand Order*).

² See *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25 et al, Modified Protective Order, 25 FCC Rcd 15168, 15173, para. 19 (WCB 2010) (*Modified First Protective Order*); *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25 et al., Second Protective Order, 25 FCC Rcd 17725, 17731, para. 20 (WCB 2010) (*Second Protective Order*); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC, to Paul Margie, Wiltshire & Grannis LLP, WC Docket No. 05-25, 26 FCC Rcd 6571 (WCB 2011); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC, to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, WC Docket No. 05-25, 27 FCC Rcd 1545 (WCB 2012); *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25 et al., Order and Data Collection Protective Order, 29 FCC Rcd 11657, 11676, Appx. A at para. 18 (WCB 2014) (*Data Collection Protective Order*); *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25 et al., Order and Modified Data Collection Protective Order, 30 FCC Rcd 10027 (WCB 2015); *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Order, 31 FCC Rcd 7104 (WCB 2016); see also *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order, 20 FCC Rcd 10160 (WCB 2005) (*First Protective Order*) (superseded by the *Modified First Protective Order*). Collectively, we refer to these protective orders and their supplements as the "*BDS Protective Orders*."

³ The *BDS Protective Orders* require reviewing parties, which include counsel and consultants, to destroy or return to submitting parties confidential and highly confidential documents within two weeks after conclusion of the price cap BDS proceedings and any administrative or judicial review, and require all counsel to certify compliance with these terms and deliver such certification to counsel for the submitting party not more than three weeks after the conclusion of the price cap BDS proceedings. See *Modified First Protective Order*, 25 FCC Rcd at 15173, para. 19; (continued....)

Bureau extends those deadlines for six months for any party that certifies under penalty of perjury that timely compliance will be more burdensome because of workplace or personnel limitations arising from the pandemic. Finally, the Bureau opens a new docket, WC Docket No. 21-17, for purposes of conducting future triennial updates to the list of price cap carrier-served counties deemed competitive pursuant to section 69.803(c) of the Commission's rules.⁴

Price Cap BDS Proceedings. On April 28, 2017, the Commission released the *Price Cap BDS Order* adopting a comprehensive regulatory framework for BDS provided by price cap incumbent local exchange carriers (LECs).⁵ On appeal, the U.S. Court of Appeals for the Eighth Circuit largely upheld the *Price Cap BDS Order*, but partially vacated and remanded to the Commission the issue of pricing regulation for BDS Time Division Multiplexing (TDM) transport services for price cap carriers.⁶ On July 12, 2019, the Commission released the *Price Cap BDS Remand Order* which, among other things, eliminated *ex ante* pricing regulation of TDM transport services provided by price cap carriers.⁷ No party filed either a petition for reconsideration or a petition for judicial review challenging the *Price Cap BDS Remand Order*. Accordingly, there are no outstanding issues pending before the Commission in the price cap BDS proceedings and the dockets are no longer active. Consistent with the *Price Cap BDS Order*,⁸ the Bureau therefore closes the following dockets:

- *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25;
- *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; and
- *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593.

BDS Protective Orders. Pursuant to the *BDS Protective Orders*, counsel and consultants and their employees who satisfied certain requirements (Reviewing Parties) had access to confidential and highly confidential information (including highly confidential data) submitted by parties (Submitting Parties) for purposes of participating in the price cap BDS proceedings.⁹ The *BDS Protective Orders* require Reviewing Parties to destroy or return to the Submitting Party confidential and highly confidential documents within two weeks after conclusion of the price cap BDS proceedings, including any subsequent administrative or judicial review.¹⁰

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Second Protective Order, 25 FCC Rcd at 17731, para. 20; *Data Collection Protective Order*, 29 FCC Rcd at 11676, Appx. A at para. 18.

⁴ See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Report and Order, 32 FCC Rcd 3459, 3527-29, paras. 145-152 (2017) (*Price Cap BDS Order*), remanded in part *sub nom.*, *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (2018) (*Citizens*); 47 CFR § 69.803(c) (describing the criteria to be used to determine which counties served by a price cap carrier should be deemed competitive).

⁵ See *Price Cap BDS Order*, 32 FCC Rcd at 3462-63, para. 5.

⁶ See *Citizens*, 901 F.3d at 1015.

⁷ *Price Cap BDS Remand Order*, 34 FCC Rcd at 5775-90, paras. 15-51.

⁸ See *Price Cap BDS Order*, 32 FCC Rcd at 3592, para. 324 (ordering that the price cap BDS proceedings shall be terminated and the dockets closed should no petitions for reconsideration or petitions for judicial review be timely filed).

⁹ *Modified First Protective Order*, 25 FCC Rcd at 15170-71, paras. 7-9; *Second Protective Order*, 25 FCC Rcd at 17729-30, paras. 12-13; *Data Collection Protective Order*, 29 FCC Rcd at 11673-74, Appx. A at paras. 5-8.

Accordingly, all such documents must be returned or destroyed by **January 29, 2021**.¹¹ Consistent with the *BDS Protective Orders*, no material whatsoever containing or derived from confidential and highly confidential information (including highly confidential data) may be retained, except outside counsel may retain, under the continuing strictures of the *BDS Protective Orders*, two copies of their prepared pleadings (one of which may be in electronic format) and one copy of orders issued by the Commission or Bureau that contain confidential or highly confidential information.¹² In-house counsel may also retain, under the continuing strictures of the *BDS Protective Orders*, two copies of pleadings (one of which may be in electronic format) containing confidential information prepared in whole or in part by that party, and one copy of orders issued by the Commission or Bureau containing confidential information.¹³ All in-house and outside counsel are required to certify compliance with these terms and deliver such certification to counsel for the Submitting Party by **February 5, 2021**.¹⁴

However, given the unprecedented disruptions caused by the ongoing Coronavirus pandemic, the Bureau extends these deadlines for 6 months for any Reviewing Party whose access to the relevant confidential and highly confidential documents has been made more burdensome by the Coronavirus pandemic. Accordingly, the Bureau extends Reviewing Parties' deadline to return or destroy confidential and highly confidential documents until **July 29, 2021** and counsels' deadline to certify compliance under the *BDS Protective Orders* until **August 5, 2021** for any party that certifies under penalty of perjury that timely compliance will be more burdensome because of workplace or personnel limitations arising from the Coronavirus pandemic.

Any Reviewing Party seeking to avail itself of these extensions, must by **February 5, 2021** request an extension from the Commission and certify that its ability to access and destroy or return confidential and highly confidential documents by the deadline has been made more burdensome because of disruptions caused by the Coronavirus pandemic and that it will comply as soon as practicable, but no later than **July 29, 2021**. Such extension requests shall be made under penalty of perjury pursuant to 28 U.S.C. § 1746 and subject to penalties under 18 U.S.C. § 1001, including fine and/or imprisonment for knowingly and willfully making materially false statements before the Commission.¹⁵ Extension requests should be filed in the new *Price Cap Business Data Services* docket, WC Docket No. 21-17. For parties that file extension requests, the Bureau also extends until **August 5, 2021** affected counsel's obligation to certify compliance

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¹⁰ *Modified First Protective Order*, 25 FCC Rcd at 15173, para. 19; *Second Protective Order*, 25 FCC Rcd at 17731, para. 20; *Data Collection Protective Order*, 29 FCC Rcd at 11676, Appx. A at para. 18.

¹¹ See *Modified First Protective Order*, 25 FCC Rcd at 15173, para. 19; *Second Protective Order*, 25 FCC Rcd at 17731, para. 20; *Data Collection Protective Order*, 29 FCC Rcd at 11676, Appx. A at para. 18.

¹² See *Second Protective Order*, 25 FCC Rcd at 17731, para. 20; *Data Collection Protective Order*, 29 FCC Rcd at 11676, Appx. A at para. 18.

¹³ See *Modified First Protective Order*, 25 FCC Rcd at 15173, para. 19.

¹⁴ *Id.*; *Second Protective Order*, 25 FCC Rcd at 17731, para. 20; *Data Collection Protective Order*, 29 FCC Rcd at 11676, Appx. A at para. 18.

¹⁵ 28 U.S.C. § 1746 (unsworn declarations made under penalty of perjury); 18 U.S.C. § 1001(a) (providing, among other things, that whoever, in any matter within the jurisdiction of an executive agency, "knowingly and willfully . . . (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry . . . shall be fined under this title, imprisoned not more than 5 years . . . , or both.").

with the terms of the *BDS Protective Orders* and deliver certification to counsel for the Submitting Party.¹⁶

Price Cap Business Data Services Proceeding. By this Public Notice, the Bureau also opens a new *Price Cap Business Data Services* proceeding, WC Docket No. 21-17, for purposes of accepting the extension requests described above, conducting future triennial updates of the price cap competitive market test, pursuant to section 69.803(c) of the Commission's rules, and for other purposes related to the regulation of BDS in areas served by price cap LECs.¹⁷ In the *Price Cap BDS Order*, the Commission adopted a competitive market test to determine which counties served by price cap carriers are deemed competitive and therefore warrant relief from *ex ante* price cap regulation and detariffing of TDM-based DS1 and DS3 end-user channel terminations, and certain other lower speed, TDM-based BDS.¹⁸ To ensure that the results of the competitive market tests continue to reflect current market conditions, the Commission directed the Bureau to update the test results every three years based on the most recent Form 477 broadband deployment data submitted by cable operators.¹⁹ All future activities related to such updates will be conducted in WC Docket No. 21-17.

Contact Information. For further information, please contact Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-8209 or via email at Christopher.Koves@fcc.gov.

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¹⁶ See *Modified First Protective Order*, 25 FCC Rcd at 15173, para. 19; *Second Protective Order*, 25 FCC Rcd at 17731, para. 20; *Data Collection Protective Order*, 29 FCC Rcd at 11676, Appx. A at para. 18.

¹⁷ 47 CFR § 69.803(c).

¹⁸ *Price Cap BDS Order*, 32 FCC Rcd at 3527-29, paras. 145-152; 47 CFR § 69.803(a), (c).

¹⁹ 47 CFR § 69.803(c); *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151.